

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Joint Application by BellSouth Corporation,)
BellSouth Telecommunications, Inc.,) WC Docket No. 02-150
and BellSouth Long Distance, Inc. for)
Provision of In-Region, InterLATA Services)
in Alabama, Kentucky, Mississippi, North)
Carolina, and South Carolina)

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

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DOJ Georgia/Louisiana II Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Georgia and Louisiana</i> , FCC CC Docket No. 02-35 (Mar. 21, 2002), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Missouri I Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Missouri</i> , FCC CC Docket No. 01-88 (May 9, 2001), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
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BellSouth NC PMAP Notice	Letter from Edward L. Rankin III, BellSouth Telecommunications, Inc., <i>In re: Application of BellSouth Telecommunications, Inc., to Provide In-Region, InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1996</i> , North Carolina UC Docket No. P-55, Sub 1022 (July 19, 2002), available at http://ncuc.commerce.state.nc.us/docksrch.html .
CLEC Coalition/BellSouth CCP Redline/Greenline	GA-PSC Staff Version, Filed Jointly by the CLEC Coalition and BellSouth on July 5, 2002, BellSouth Change Control Process, CCP05_29.doc, Version 3.1, May 29, 2002, <i>In re: Performance Measures for Telecommunications Interconnection, Unbundling and Resale</i> , Georgia PSC Docket No. 7892-U (July 5, 2002), available at www.psc.state.ga.us .
Florida PSC Software Defect Order	Notice of Proposed Agency Action Order Revising Performance Assessment Plan, <i>In re: Investigation into the Establishment of Operations Support Systems Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies (BellSouth Track)</i> , Florida PSC Docket No. 000121A-TP (July 22, 2002), available at www.psc.state.fl.us .
Florida PSC Staff CCP Proposal	Memorandum, <i>In re: Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996 (Third Party OSS Testing)</i> , Florida PSC Docket No. 960786B-TL; <i>In re: Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunications, Inc.'s Service Territory</i> , Florida PSC Docket No. 981834-TP (July 15, 2002), available at www.psc.state.fl.us .
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KPMG FL Draft Final Report	KPMG Consulting, BellSouth Telecommunications, Inc., OSS Evaluation Project Draft Final Report Version 1.0, <i>In re: Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996 (Third Party OSS Testing)</i> , Florida PSC Docket No. 960786B-TP (June 21, 2002), available at < http://www.psc.state.fl.us/industry/telecomm/oss/oss.cfm >.
KPMG FL OSS Test Exceptions	Florida PSC Operations Support Systems Testing, BellSouth-Florida OSS Test Exceptions, available at < http://www.psc.state.fl.us/industry/telecomm/oss/exceptions.cfm >.
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North Carolina UC Comments	Comments of the North Carolina Utilities Commission, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (July 9, 2002).
North Carolina UC Notice of Decision	Notice of Decision, <i>In re: Application of BellSouth Telecommunication, Inc., to Provide In-Region InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1996</i> , North Carolina UC Docket No. P-55, Sub 1022 (May 23, 2002), attached to BellSouth Br. App. C - North Carolina as Tab 24.
SECCA Emergency Motion	Emergency Motion of the Southeastern Competitive Carriers Association to Establish a Procedure for Implementation of Changes to the Service Quality Measures, <i>In re: Performance Measurements for Telecommunications Interconnection, Unbundling and Resale</i> , Georgia PSC Docket No. 7892-U (June 12, 2002), available at <www.psc.state.ga.us>.
South Carolina PSC Comments	Comments of the South Carolina Public Service Commission, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (July 11, 2002).
South Carolina PSC Section 271 Order	Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act of 1996, <i>In re: Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996</i> , South Carolina PSC Docket No. 2001-209-C (Feb. 14, 2002), attached to BellSouth Br. App. C - South Carolina as Tab 33.
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Covad Comments	Comments of Covad Communications Company, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (July 11, 2002).
WorldCom Comments	Comments of WorldCom, Inc. on the Application by BellSouth for Authorization to Provide In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (July 11, 2002).
WorldCom Lichtenberg Decl.	Declaration of Sherry Lichtenberg, <i>attached to</i> WorldCom Comments as Tab A.

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EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Introduction and Summary

The United States Department of Justice (“Department”), pursuant to Section 271(d)(2)(A) of the Telecommunications Act of 1996¹ (“1996 Act”), submits this evaluation of the joint application filed by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., on June 20, 2002, to provide in-region, interLATA services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina. This application is BellSouth’s first for Alabama, Kentucky, Mississippi, and North Carolina, and its second for South Carolina.²

As the Department has explained, in-region, interLATA entry by a regional Bell Operating Company (“BOC”) should be permitted only when the local markets in a state have

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

² BellSouth filed its initial application for long distance authority in South Carolina on September 30, 1997; the Department submitted its evaluation of that application on November 4, 1997; and the FCC denied the application on December 24, 1997. More recently, however, BellSouth’s joint application for long distance authority in Georgia and Louisiana was approved by the Commission on May 15, 2002.

been “fully and irreversibly” opened to competition.³ This standard seeks to measure whether the barriers to competition that Congress sought to eliminate with the 1996 Act have in fact been fully eliminated and whether there are objective criteria to ensure that competitive local exchange carriers (“CLECs”) will continue to have nondiscriminatory access to the facilities and services they will need from the BOC in order to enter and compete in the local exchange market. In applying its standard, the Department considers whether all three entry paths contemplated by the 1996 Act -- facilities-based entry involving the construction of new networks, the use of the unbundled elements of the BOC’s network (“UNEs”), and resale of the BOC’s services -- are fully and irreversibly open to competitive entry to serve both business and residential customers.

The Department’s Georgia/Louisiana I and Georgia/Louisiana II Evaluations focused on issues related to BellSouth’s Operational Support Systems (“OSS”) and performance metrics.⁴ In its Georgia/Louisiana II Evaluation the Department expressed several concerns regarding BellSouth’s compliance with appropriate change management processes and the reliability of its performance reporting system.⁵ Although the Department found BellSouth’s OSS adequate, it also recognized that additional improvements in BellSouth’s OSS had been identified and were to be implemented under the direction of the Georgia Public Service Commission (“Georgia PSC”) and Louisiana Public Service Commission (“Louisiana PSC”) and that completion of the metrics audit under the auspices of the Georgia PSC should further improve the accuracy and reliability of BellSouth’s performance reports.⁶ Thus, the Department recommended that the

³ See DOJ Oklahoma I Evaluation at vi-vii, 36-51.

⁴ See DOJ Georgia/Louisiana I Evaluation at 13-38; DOJ Georgia/Louisiana II Evaluation at 7-20.

⁵ See DOJ Georgia/Louisiana II Evaluation at 8, 10, 13-20.

⁶ *Id.* at 21.

FCC approve the application subject to its review of certain concerns expressed in the Department's Evaluation.⁷

In this Evaluation, the Department focuses on developments that have occurred since the Georgia/Louisiana II Evaluation and the extent to which they demonstrate whether the Department's concerns are being addressed. BellSouth's Application demonstrates that, in conjunction with the state commissions, it has made substantial progress in addressing issues previously identified by the Department. The Commission should review the concerns expressed in this Evaluation, and if it is satisfied that these concerns have been addressed, the Department recommends that it approve BellSouth's application.

I. State Commission Proceedings

The Alabama Public Service Commission ("Alabama PSC") found BellSouth had met the checklist requirements of Section 271; concluded that BellSouth's OSS are sufficiently similar to those in Georgia to justify reliance on the third-party test conducted in Georgia; adopted on an interim basis the performance measures and penalty plan approved by the Georgia PSC, with plans to establish a proceeding to consider adopting the performance measures and penalty plan approved in Florida; and established UNE rates in May 2002.⁸

The Kentucky Public Service Commission ("Kentucky PSC") found that BellSouth had met the requirements of the competitive checklist; relied on the third-party test conducted in Georgia given evidence that BellSouth's OSS are functionally equivalent in Georgia and Kentucky; adopted the performance measures and penalty plan approved by the Georgia PSC; and established UNE rates in December 2001.⁹

⁷ *Id.* at 21-22.

⁸ Alabama PSC Comments at 171, 250; BellSouth Br. at 45.

⁹ Kentucky PSC Comments at 2-3, 17, 29-30, 41-42.

The Mississippi Public Service Commission (“Mississippi PSC”) found that BellSouth had met the requirements of the competitive checklist of Section 271; found that BellSouth’s OSS are the same across the nine-state region according to the FCC’s criteria; adopted the performance measures approved by the Georgia PSC; approved a performance penalty plan to take effect once BellSouth exercises a grant of interLATA authority; and established UNE rates in October 2001.¹⁰

The North Carolina Utilities Commission (“North Carolina UC”) found that BellSouth had satisfied its obligations under the competitive checklist; concluded that BellSouth’s OSS are the same throughout its region; adopted the performance measures and penalty plan approved in Georgia until the effective date of the order in its own permanent performance measures docket; and in a staggered proceeding between 1997 and 2002 established UNE rates, which will be re-examined in a new proceeding already begun.¹¹

The South Carolina Public Service Commission (“South Carolina PSC”) found BellSouth had met the requirements of the competitive checklist; concluded that BellSouth’s OSS are the same throughout its region; adopted the performance measures approved by the Georgia PSC, and directed BellSouth to develop an additional measure relating to change management; adopted a performance penalty plan; and ordered UNE rates in November 2001.¹²

II. Entry into the Local Telecommunications Markets

¹⁰ Mississippi PSC Comments at 2-3, 8, 10-13, 16.

¹¹ North Carolina UC Comments at 154, 159, 164, 268-69; BellSouth Br. at 55-59.

¹² South Carolina PSC Comments at 1; South Carolina PSC Section 271 Order at 22, 24-25, 27-28, 78, 120; BellSouth Br. at 54.

In assessing whether the local markets in a state are fully and irreversibly open to competition, the Department looks first to the actual entry in a market.¹³ But the Department does not broadly presume that all three entry tracks -- facilities-based, unbundled network elements ("UNEs"), and resale -- are open or closed on the basis of an aggregate level of entry alone.¹⁴ The following table reports CLEC entry in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina in terms of shares of total residential and business lines served and shares of residential and business lines served by means of each mode of entry.

¹³ See DOJ Pennsylvania Evaluation at 3-4 ("The Department first looks to actual competitive entry, because the experience of competitors seeking to enter a market can provide highly probative evidence about the presence or absence of artificial barriers to entry. Of course, entry barriers can differ by types of customers or geographic areas within a state, so the Department looks for evidence relevant to each market in a state." (Footnote omitted.)).

¹⁴ See, e.g., DOJ Georgia/Louisiana I Evaluation at 7; DOJ Missouri I Evaluation at 6-7.

CLEC Entry by State¹⁵

		Alabama	Kentucky	Mississippi	North Carolina	South Carolina
	Total Lines¹⁶	2,120,584	1,298,043	1,386,011	2,786,354	1,619,223
	Total Bus Lines	722,688	403,927	441,469	1,100,185	551,661
	Total Res Lines	1,397,896	894,116	944,542	1,686,169	1,067,562
CLEC Shares	% Total Lines	11.2	7.3	8.0	12.9	10.7
	% Total Bus	25.1	14.6	13.1	27.0	22.6
	% Total Res	4.0	4.0	5.5	3.6	4.6
	% Bus. Fac-B	17.1	8.0	5.1	21.9	15.6
	% Bus. UNE-P	7.0	4.9	5.8	3.6	5.6
	% Bus. Resale	0.9	1.7	2.2	1.4	1.4
	% Res. Fac-B	1.1	1.0	0.03	1.1	0.5
	% Res. UNE-P	0.3	0.5	2.4	0.5	0.2
	% Res. Resale	2.6	2.5	3.1	2.0	3.8

¹⁵ See BellSouth Stockdale Aff. at 12 tbl. 2, 19 tbl. 5, 25-26 tbl. 8, 31 tbl. 11, 36 tbl. 14 (line counts as of March 2002) & Attachs. 12 at 1-3, 15 at 1-3, 18 at 1-3, 21 at 1-3 & 24 at 1-3; BellSouth Line Counts *Ex Parte* at 2. The second three categories report CLEC lines as percentages of total lines, business lines, and residential lines, respectively; the last six categories report percentages of business and residential lines served by CLECs by means of each mode of entry, i.e., facilities-based (service via primarily a CLEC's own network that is either connected directly to the customer premises or connected through loops leased from the BOC), UNE-platform (a combination of loop, switch, and transport elements), and resale.

Estimated market share will vary depending on the methodology used to estimate facilities-based lines. BellSouth offers two sets of calculations, see BellSouth Stockdale Aff. ¶¶ 7-15, and as explained previously, the Department relies on estimates based primarily on E-911 database entries (BellSouth's Method 2). See, e.g., DOJ Georgia/Louisiana I Evaluation at 8 n.24. In any event, the effective difference between the two methods is small, resulting in estimates that CLECs serve between, respectively, 11.5 (Method 1) and 11.2 (Method 2) percent of Alabama lines, 9.3 and 7.3 percent of Kentucky lines, 9.2 and 8.0 percent of Mississippi lines, 14.3 and 12.9 percent of North Carolina lines, and 11.7 and 10.7 percent of South Carolina lines. BellSouth Stockdale Aff. at 10 tbl. 1, 12 tbl. 2, 18 tbl. 4, 19 tbl. 5, 24 tbl. 7, 25-26 tbl. 8, 30 tbl. 10, 31 tbl. 11, 35 tbl. 13, 36 tbl. 14.

¹⁶ Figures report total lines in BellSouth's service area in these states, each of which has several incumbent local exchange carriers other than BellSouth. See BellSouth Stockdale Aff. ¶¶ 16, 26, 36, 42, 49.

Given the regional nature of BellSouth's OSS,¹⁷ the Department evaluates the state of entry regionwide, taking note that pricing or other state-specific factors may significantly affect the degree to which CLECs use a specific mode in a specific state. In the states addressed in this application, the levels of entry and the absence of evidence that entry has been unduly hindered by problems with obtaining inputs from BellSouth lead the Department to conclude that opportunities are available to competitive facilities-based carriers serving business customers. In these states, however, there is less competition to serve residential customers via facilities (including UNE loops) and to serve business and residential customers via other modes of entry. The Department recognizes that the systems and processes serving these five states are largely the same as those at issue and approved in the Georgia/Louisiana proceeding and therefore, notwithstanding the lower levels of competition in these five states, finds the OSS sufficient to support competitive entry subject to the concerns discussed below.

III. Nondiscriminatory Access To BellSouth's OSS

The Department's Georgia/Louisiana II Evaluation concluded that BellSouth had made sufficient improvements to its OSS to merit approval of its application.¹⁸ The Department recognized, however, that important efforts to improve BellSouth systems and processes were continuing, and the Department expected that additional progress would be made.¹⁹ In its *Georgia/Louisiana Order*, the FCC agreed that BellSouth was offering nondiscriminatory access

¹⁷ BellSouth asserts that its OSS is regional in nature, BellSouth Br. at 60-66, and the FCC found the OSS to be the same in Georgia and Louisiana based in part on an independent third-party audit finding sameness across the BellSouth nine-state region, *FCC Georgia/Louisiana Order* ¶ 109-10. Thus, it is appropriate to take into consideration the KPMG testing in Florida and actions taken by the Florida and Georgia PSCs.

¹⁸ DOJ Georgia/Louisiana II Evaluation at 2-3, 21-22.

¹⁹ *Id.* at 11, 18, 21.

to its OSS²⁰; however, it also noted several areas it intended to monitor, and where it was prepared to take enforcement action if needed.²¹

Although commenters have raised a number of issues relating to BellSouth's OSS, the Department's concerns continue to focus on the change management process. The Department believes that significant progress has been made, but important steps should be taken to further improve BellSouth's change management process.

A. The Need for CLEC Input in the Change Request Process

The Department's Georgia/Louisiana II Evaluation expressed concern that BellSouth had not always given adequate consideration to input from the CLECs regarding upgrades to the OSS software.²² However, the Department found encouraging BellSouth's proposal to provide for a larger CLEC role and its commitment to implement a substantial number of CLEC change requests this year.²³ The Department's concern reflects KPMG's finding in the Florida OSS test that BellSouth was not properly accepting CLEC input on CLEC-affecting OSS changes.²⁴ In its *Georgia/Louisiana Order*, the FCC concluded that:

While we find BellSouth's performance to be adequate, we note that it is important that BellSouth continue to work collaboratively with competitive LECs through the Change Control Process on prioritization issues, provide competitive LECs with sufficient information to be able to make informed decisions regarding prioritization of proposed systems changes and implement changes in a timely manner. Should any problems in this regard develop such that the requirements of section 271 are no longer met, we are prepared to take appropriate enforcement action.²⁵

²⁰ *FCC Georgia/Louisiana Order* ¶ 101.

²¹ *See, e.g., id.* ¶¶ 118, 158, 195.

²² DOJ Georgia/Louisiana II Evaluation at 15-17.

²³ *Id.* at 16-18.

²⁴ KPMG FL OSS Test Exception 88.

²⁵ *FCC Georgia/Louisiana Order* ¶ 193.

Under the auspices of the Georgia PSC and the Florida Public Service Commission (“Florida PSC”), BellSouth and the CLECs are continuing to engage in a process for establishing new procedures for prioritizing and implementing CLEC change requests.²⁶ KPMG’s recently-issued *Draft Final Report* states that the BellSouth proposals to increase CLEC participation in the prioritization of change requests would, if implemented, address the concerns identified in the exception.²⁷ Pursuant to these proposals, adopted by the Florida PSC on July 23, 2002, BellSouth will allocate one-half of planned production releases, after fixes for defects and mandated changes, to the CLECs for new features.²⁸

In this Application BellSouth describes a number of additional positive developments relating to its change control process that have occurred since the Department filed its Georgia/Louisiana II Evaluation. For example, BellSouth has agreed to accept the CLECs’ proposed definition of “CLEC Affecting” in the change management document, significantly increasing the scope of BellSouth OSS activity that will be disclosed to the CLECs.²⁹ The Department anticipates that such additional disclosure should prevent further instances such as that in which BellSouth apparently did not give advance notice to CLECs that orders designating BellSouth as the long distance carrier would be rejected.³⁰ Advance notice of such OSS changes should give CLECs an opportunity to adjust their method of writing orders or to raise objections to the change.

²⁶ Georgia PSC Georgia/Louisiana II Comments at 26-27; Florida PSC Staff CCP Proposal at 6-7.

²⁷ *KPMG FL Draft Final Report* at RMI 14-19; *see also* BellSouth FL OSS Test *Ex Parte* at 2 (describing the BellSouth proposals).

²⁸ Florida PSC Staff CCP Proposal at 6; Florida PSC Vote Sheet.

²⁹ BellSouth Stacy Aff. ¶ 157.

³⁰ *See* WorldCom Comments at 6-7; WorldCom Lichtenberg Decl. ¶¶ 25-26.

An important issue still remains, however, regarding whether BellSouth is committing sufficient resources overall to the process of upgrading the interfaces to its OSS used by the CLECs. AT&T maintains that BellSouth's current schedule for implementing CLEC change requests will not substantially reduce the backlog of CLEC requests until May 2003 at the earliest.³¹ CLECs advocate that BellSouth be required to implement prioritized CLEC change requests within a fixed period of time.³² This issue is currently before the Georgia and Florida PSCs.³³ As the Department's Georgia/Louisiana II Evaluation states, this judgment requires a difficult balancing of interests.³⁴ The Department expects that BellSouth will cooperate in the resolution of this question and be responsive to the states' determinations, which should be made shortly.

**B. Conformance with Change Management Procedures
When Implementing OSS Changes**

The Department's Georgia/Louisiana II Evaluation expressed concerns regarding the process by which BellSouth released changes to its OSS software.³⁵ These concerns reflected Exception 157 opened by KPMG in the Florida OSS test, which found that BellSouth had not

³¹ AT&T Comments at 10-11. Several CLEC comments illustrate the competitive significance of implementing CLEC change requests. *See, e.g.*, Birch Comments at 4-13 (discussing the need for mechanized process to remove phantom DSL codes to avoid manually processing); Covad Comments at 7-13 (explaining need for electronic ordering of certain types of DSL loops).

³² CLEC Coalition/BellSouth CCP Redline/Greenline at 24-25.

³³ Florida PSC Staff Change Request Implementation Proposal at 3-6; CLEC Coalition/BellSouth CCP Redline/Greenline at 24-25.

³⁴ DOJ Georgia/Louisiana II Evaluation at 17. The Department commends the state commissions' work in this area.

³⁵ *Id.* at 10, 15-18.

followed proper internal testing procedures in releasing software upgrades, resulting in a failure to detect a number of defects before the new software was placed into production.³⁶

In its *Georgia/Louisiana Order*, the FCC stated, “we share the Department of Justice’s concern that software releases with numerous defects inhibit smooth transitions between releases and we plan to monitor BellSouth’s performance in this regard.”³⁷ The Commission also noted that “new metrics being developed in Georgia will measure how well BellSouth fixes defects within the required time frames. Should BellSouth’s performance in this regard decline such that it substantially degrades OSS performance, we may take appropriate enforcement action.”³⁸

Subsequent to the *Georgia/Louisiana Order*, BellSouth implemented Release 10.5, which also contained a number of defects that had not been discovered in pre-release testing.³⁹ KPMG’s *Draft Final Report* discussed Exception 157 relating to defects in OSS upgrades and found that BellSouth has not satisfied three of the testing criteria for Interface Development.⁴⁰ To address KPMG’s concerns regarding defects in BellSouth’s OSS releases, on July 22, 2002, the Florida PSC ordered BellSouth to implement additional performance measures relating to (1) the number of defects in future releases; (2) the interval within which BellSouth corrects such defects; and (3) the validation of software by BellSouth following its releases.⁴¹ The order noted

³⁶ Exception 157 stated that “[b]ased on the number of defects encountered in BellSouth releases 10.2 and 10.3, however, it appears that the BellSouth software/interface development methodology is not consistently followed.” *KPMG FL Draft Final Report* at RMI 81.

³⁷ *FCC Georgia/Louisiana Order* ¶ 195.

³⁸ *Id.*

³⁹ WorldCom Comments at 2; WorldCom Lichtenberg Decl. ¶ 8.

⁴⁰ *KPMG FL Draft Final Report* at RMI 81-85, 101-02; *see also id.* at RMI 101-02 (“KPMG Consulting reviewed the results of Release 10.5 to ensure adherence to the BellSouth quality assurance process. As of June 10, 2002, there have been eighteen (18) software and six (6) documentation defects identified in Release 10.5. KPMG Consulting amended Exception 157 to reflect these additional issues, and this exception remains open.”).

⁴¹ Florida PSC Software Defect Order at 11-12.

the significant impact that defective software releases have on CLECs' use of BellSouth's OSS and expressed concern that dedication of resources to correct the deficiencies renders them unavailable for implementation of change requests, thus contributing to the backlog of unimplemented change requests.⁴²

BellSouth states that it is taking steps to reduce the number of defects. First, it plans to use an expanded set of test orders for the testing of future releases, which it believes should reduce the number of defects not discovered until after its software is placed into production.⁴³ Second, BellSouth is changing its procedures to provide for CLEC input on whether a release should enter production in cases where a known defect would have a significant impact on the CLEC and where it has tested the release.⁴⁴

BellSouth appears to be cooperating with state regulators and the CLECs to determine necessary changes in its pre-release procedures and testing, and the Department expects that if additional resources are needed to meet these requirements, BellSouth will provide them. The Commission should carefully monitor BellSouth's future releases, especially the August 24 Release 10.6.

IV. Further BellSouth Changes to Reported Performance Measures

The fact that BellSouth made changes to its service order accuracy measure without advance public notice or the approval of the relevant state commissions was a significant issue in the Georgia/Louisiana II proceeding. Given the clear concerns raised and the support for advance notice and approval processes expressed by the Department,⁴⁵ the Georgia and

⁴² *Id.* at 7, 9-10.

⁴³ BellSouth FL OSS Test *Ex Parte* at 10.

⁴⁴ *Id.* at 10-11.

⁴⁵ DOJ Georgia/Louisiana II Evaluation at 13-14.

Louisiana PSCs,⁴⁶ and the FCC,⁴⁷ the Department is troubled that BellSouth has made many additional changes to its reported performance metrics, especially in converting from its computer platform PMAP 2.6 to PMAP 4.0, without notifying CLECs and regulators until after the changes were implemented.⁴⁸

BellSouth argues that implementing PMAP 4.0 was important because of limitations with PMAP 2.6 and that changes were necessary to correct prior implementation errors.⁴⁹ Both of these factors are significant. Changing the architecture of PMAP appears to be a positive development,⁵⁰ and errors should be corrected if reported metrics are to be reliable. Yet neither addresses the Department's key concern: the recurrence of *undisclosed* metrics changes.

Because of the potential impact on the reliability and usefulness of reported performance data, an incumbent should provide advance public notice of *all* metrics-related changes. First, metrics calculated under new rules may no longer be directly comparable to metrics previously reported. Second, changes to audited measures limit the applicability of those audits. Third,

⁴⁶ Georgia PSC Georgia/Louisiana II Reply Comments at 8-9 (for example, the Georgia PSC “agree[d] . . . that changes to performance measurement calculations ‘should be made only with public notice and the concurrence’ of th[e Georgia] Commission” and indicated its intent to impose notice and approval procedural requirements (quoting DOJ Georgia/Louisiana II Evaluation at 14)); Louisiana PSC Georgia/Louisiana II Reply Comments at 6-7 (same).

⁴⁷ In granting the application, the FCC expressly supported requiring BellSouth “to provide prior notice of any proposed changes to the calculation of performance measures prior to implementation.” *FCC Georgia/Louisiana Order* ¶ 159 n.575.

⁴⁸ See generally BellSouth Varner Aff. Exs. 14, 35 (BellSouth disclosure letters to the Georgia PSC). BellSouth did not provide notice until after it had implemented the new calculations and posted preliminary metrics for the month for which the new calculations took effect. SECCA Emergency Motion at 2; cf. DOJ Georgia/Louisiana II Evaluation at 13 n.55. Although the Georgia PSC had not issued formal requirements, it clearly expected BellSouth to provide advance public notice of changes. Georgia PSC PM Change Notification Order at 2-4; Georgia PSC Georgia/Louisiana II Reply Comments at 8-9.

⁴⁹ See, e.g., BellSouth Varner Aff. ¶¶ 82, 97-101. The Department takes no position on the appropriateness of these changes.

⁵⁰ BellSouth explains that the limitations in the older platform necessitated, not merely an incremental upgrade, but a new architecture and new code. See *id.* ¶ 82. The Department hopes that “benefits in the development process . . . and maintenance,” *id.*, resulting from the “streamlined and simplified code” in PMAP 4.0, *id.* ¶ 74, will end BellSouth’s long series of metrics coding problems, see DOJ Georgia/Louisiana I Evaluation at 32-35.

changes could have substantive implications on commission-established rules. The incumbent may argue that a change has no such impact, but CLECs could conclude otherwise and should have an opportunity to present their views to the commission before implementation. To ensure a meaningful opportunity for comment and adequate time for state commissions to consider issues raised, disclosure should include sufficient information for CLECs to understand the nature of, reason for, and impact of the changes⁵¹ and needs to occur well in advance of implementation.

Following BellSouth's disclosures, on June 12, 2002, CLECs filed an emergency motion with the Georgia PSC raising issues as to the appropriateness of these changes and the need for a formal process requiring prior disclosure of future changes.⁵² The Georgia PSC's order in response to the motion requires BellSouth to provide advance notice of "any change to the method by which its performance data is calculated," specifies types of information that must be disclosed, and provides a procedure for industry discussions and commission filings.⁵³ The Department expects that such requirements will, with the necessary monitoring,⁵⁴ prevent the further recurrence of undisclosed, unapproved metrics changes.

⁵¹ The Department believes that the changes described in BellSouth's initial disclosures were poorly documented. Further, the disclosures do not appear to contain the level of information contemplated by the Georgia PSC. *See Georgia PSC Georgia/Louisiana II Reply Comments at 8-9.*

⁵² SECCA Emergency Motion.

⁵³ Georgia PSC PM Change Notification Order at 2-4. Similar action may be appropriate in other states, however, to cover changes relating to measures that are different from the Georgia measures.

⁵⁴ In this regard the Department notes that, notwithstanding an order requiring BellSouth to notify the North Carolina UC within five days of any metrics changes, North Carolina UC Notice of Decision ¶ 5, BellSouth apparently did not notify the commission of its numerous metrics changes discussed above until July 19, 2002, *see generally* BellSouth NC PMAP Notice.

V. Conclusion

BellSouth's Application demonstrates that, in conjunction with the state commissions, it has made substantial progress in addressing issues previously identified by the Department. The Commission should review the concerns expressed in this Evaluation, and if it is satisfied that these concerns have been addressed, the Department recommends that it approve BellSouth's application.

Respectfully submitted,

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Certificate of Service

I hereby certify that I have caused a true and accurate copy of the foregoing Evaluation of the United States Department of Justice to be served on the persons indicated on the attached service list by first class mail, overnight mail, hand delivery, or electronic mail on July 30, 2002.

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